

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In the application of : MORAN, Thomas J. et al  
Serial No. : 09/747,691  
Filed : December 22, 2000  
For : METHOD AND APPARATUS FOR PROVIDING  
A WEB PAGE TO A CALL MEMBER  
Examiner : ALAM, Uzma  
Art Unit : 2157  
Customer No. : 23644  
Confirmation No. : 9946

**REPLY BRIEF**

Honorable Director of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This Reply Brief is being filed in view of the Examiner's Answer of April 8, 2008. This Brief is therefore timely on June 9, 2008 (June 8, 2008 being a Sunday).

Applicants will confine their Reply Brief to addressing claim 1 and to the arguments highlighted as A to D on pages 7 to 10 of the Examiner's Answer. It is submitted that the remaining issues are adequately dealt with in the Appeal Brief and that the points made below are equally relevant to independent claims 13, 17 and 19.

**A.** Applicants wish to begin with the website/web page issue. Applicants have argued that *web page* means an individual page, while the Examiner argues, with reference to both Mustafa and the definition provided by the NetLingo website, that "*web page* can be used interchangeably with *website*". On this basis, the Examiner finds that the database in Mustafa's

Fig. 4 showing *websites* associated with agent helper systems, can read onto the claimed limitation of a *web page* associated with a potential call member.

Applicants respectfully submit that the Examiner makes four fundamental errors in this regard:

(i) The Examiner is arguing for the broadest possible interpretation, rather than the “broadest reasonable interpretation consistent with the specification” as the MPEP and the case law of the Federal Circuit both require.

(ii) The Examiner errs in relying on the specification of Mustafa to interpret the meaning of Applicants’ claim terminology, there being no legal basis for limiting or extending an Applicant’s claims by employing an entirely unrelated document as a lexicon.

(iii) Applicants submit that the single NetLingo definition found by the Examiner is not representative of the consensus as to the definition of a *web page*.

(iv) Regardless of who can submit more and better dictionary definitions, any argument which seeks to accord more weight to a dictionary than to Applicant’s own specification is in clear conflict with the guidance of the Federal Circuit in the en banc decision in *Phillips v. AWH Corp.*, 415 F.3d 1303, 75 USPQ2d 1321 (Fed. Cir. 2005), (hereinafter “*Phillips*”) quoted with approval in MPEP 2111 (“Claim Interpretation: Broadest Reasonable Interpretation”).

As regards (i):

Claim 1 includes the step of providing a selected *web page* to a telephone terminal employed by a call member. If *web page* is read as being synonymous with *website* this step is meaningless. Web-enabled telephone terminals display individual pages, not entire websites. Throughout Applicants’ specification, *web page* is used only to mean a single document or resource for display on a terminal; it is never used to mean *website* as the Examiner argues (i.e. the entire collection of pages managed from or accessible through a single domain). Therefore, it cannot be a reasonable

interpretation to equate *web page* with *website*, and the Examiner has therefore strayed beyond the broadest reasonable interpretation in favour of the broadest possible interpretation, leading to a claim interpretation which would be devoid of meaning.

As regards (ii):

Applicants refer to the *Phillips* decision, which discusses the relative value to claim interpretation of intrinsic evidence on the one hand (i.e. considerations based on Applicants' own specification and claims when considered as a coherent whole and in the light of prosecution history), and extrinsic evidence on the other hand (based on e.g. "expert and inventor testimony, dictionaries, and learned treatises": see also *Markman*, 52 F.3d at 980).

The question of whether Mustafa does or does not use the terms *web page* and *website* interchangeably, is of no relevance to the interpretation of *web page* in Applicants' claims. If, as Applicants contend, *web page* is (when properly interpreted) deemed to mean an individual web document or resource as opposed to a website (i.e. a collection of such documents or resources), then the issue to be determined with respect to Mustafa is simply this: does Mustafa disclose a record of an association between such individual documents/resources and information identifying call members (regardless of whether Mustafa describes such documents/resources as "web pages", "html pages" or "websites").

Using Mustafa as a source of interpretation of Applicants' claims, rather than as a disclosure to be compared to those claims when properly interpreted, is erroneous.

As regards (iii):

Applicants submit that the particular dictionary definition relied on in the Examiner's answer is inconsistent with the majority of definitions consulted by Applicants.

For example, while Applicants are prohibited from filing further evidence, the Board may determine for themselves that the particular

definition chosen by the Examiner in support of the rejection is entirely unrepresentative of the normal definitions of both *web page* and *website* according to both general and specialized sources.

One way of demonstrating this is to consult the Wikipedia encyclopedia entries for both terms. Wikipedia, being an open source website which can be edited by anyone, contains a reliable consensus of how the user community interprets concepts.

Another simple way of satisfying oneself that the NetLingo definition is an unrepresentative one is to submit each of the following two italicised queries to the Google search engine: *define:web page* and *define:website*. Google interprets the *define:* operator as a command to return a snapshot of dozens of definitions of the terms in question.

Applicants submit that, without prejudice to their primary argument below (that dictionary definitions are not an appropriate starting point for claim interpretation), and in view of the fact that they are prohibited from filing evidence in response to the Examiner's new evidence, these simple checks will satisfy the Board that there is a consistent theme throughout these definitions: a *web page* is a document or resource on the world wide web, and is one of the building blocks of a *website*. A *website*, in contrast, is a collection of *web pages* managed from a single domain or accessible from a home page. The two are not used synonymously in normal usage (or in Applicants' specification).

While these suggested searches will clearly show that the definition relied on by the Examiner is unusual and unrepresentative, Applicants wish to make it clear that they are not to be bound by any particular such definition found on the Internet, as this point is made merely to rebut the definition chosen by the Examiner. See the following section for additional explanation in this regard.

As regards (iv):

It is Applicants' position that no dictionary definition should be determinative of the scope of Applicants' claims, and that the case law of the Federal Circuit and the guidance of the MPEP make it abundantly clear that reliance on dictionaries and other extrinsic evidence, while ignoring the intrinsic evidence of the specification, is an improper approach to claim construction.

The MPEP instructs as follows (at 2111.01):

*In construing claim terms, the general meanings gleaned from reference sources, such as dictionaries, must always be compared against the use of the terms in context, and the intrinsic record must always be consulted to identify which of the different possible dictionary meanings is most consistent with the use of the words by the inventor.*

However, this guidance is of course merely that. It is the case law of the Federal Circuit which is binding on the Office, and Applicants respectfully wish to refer the Board to the *Phillips* decision, which goes into great detail in laying down the correct approach to extrinsic and intrinsic evidence.

In *Phillips* it was noted that a line of case law had developed which suggested that a dictionary should be the beginning point in claim interpretation. The "high water mark" of this approach was the decision in *Texas Digital Systems, Inc. v. Telegenix, Inc.* The en banc panel in *Phillips* rejected this approach on a number of grounds, including the following:

*"Different dictionaries may contain somewhat different definitions for the same words. A claim should not rise or fall based on the preferences of a particular dictionary editor, or the court's independent decision, uninformed by the specification, to rely on one definition rather than another... The resulting definitions therefore do not necessarily set forth the inventor's goal of distinctly setting forth his invention as a person of ordinary skill in that particular art would understand it."*

Applicants therefore submit that any analysis of the term "web page" should be primarily informed by the specification, rather than by a single

instance of a definition which appears to be in conflict with most other definitions and with the manner in which the specification uses the term. On this basis, the broadest reasonable interpretation of "web page" does not extend to encompass websites (i.e. collections of web pages which cannot be displayed on a telephone terminal).

The specification uses web page throughout in a manner which accords entirely with the Oxford Dictionary's own definition of *web page* (Annex 3), and never in a manner which suggests that it means a *website* (Annex 4). Therefore, the proper interpretation is that the term is not broad enough to cover a website.

**B.** The remainder of the Examiner's Answer leaves Applicants in some confusion as to exactly how the Mustafa reference is now alleged to anticipate the claimed invention.

The reason for this is that whereas the claim requires consistent interpretation between the various entities (identified call member, selected web page, record of an association), it is not clear that there is any such consistency in the Examiner's Answer.

Applicants point out the following to illustrate the consistency required throughout claim 1.

- 1) There must be a record of an association between stored web pages and pre-specified information identifying one or more potential call members.
- 2) When a call is in progress, a member of the call must be identified (let us refer to this individual as "call member A").
- 3) Based on an association in the record between information identifying call member A and one of the stored web pages (let us say web page X), that particular web page is selected.
- 4) That same selected web page X is provided to a telephone terminal employed by one of the call members (not necessarily call member A).

Therefore, the method has at its heart the identification of call member A. From this identification, one refers to the record, finds in that record an association with web page X, and provides that web page X to a call member.

Issue B relates to the identification of call member A while the call is in progress. The Examiner's Answer suggests that this occurs (with reference to paragraph [0032] of Mustafa) "once the request is accepted". However, while the client ID is indeed sent to the agent system once an agent system accepts the help request, there is no call in progress at this point. The client has, at this point, simply clicked on a button to request help, and this request has been accepted. As is made clear by paragraph [0033] several further steps take place before any voice/video call is established:

- (i) the profile contents are retrieved from the database to establish a priority level;
- (ii) the geographical information is used to determine the closest available gateway;
- (iii) a choice is made about how to deliver further web content to the client system from among the options given in paragraphs [0034] to [0037].

As paragraphs [0034] to [0037] make clear, voice content is delivered using the gateway chosen only after the client was identified. No call is in place at the time of identification of the client.

C. The Examiner's Answer says "In response to Applicant's argument C, Mustafa teaches that an agent is selected based on its association with the web page."

Thus, having argued in the preceding section that "call member A" is the client who is identified when the call is in progress, the argument continues based on the relevant call member being the agent. This is inconsistent and cannot support a coherent argument of anticipation.

Nevertheless, it misses the point to argue that the agent is selected based on a web page (by which the Examiner means a website of course). The claim limitation is that of selecting a web page, from among a number of web pages identified in a record, based on the identification of a call member.

Choosing "an agent based its association with the web page" (i.e. website) does not meet the claim limitation.

D. The argument on this point appears to center on the fact that the web page being viewed by the client is also provided to the agent. It ignores the limitation that this must be a particular web page identified in the record from an association with the identified call member, and ignores the distinction between a website and a web page.

### Summary

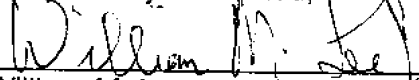
Insofar as a consistent argument can be identified, Applicants understand that the Examiner is arguing that a client is identified following a request for help on a website. That website has one or more call centers specified in a record to provide such help, and when one of the call centers accepts the request, this is done based on an association in the record. The web page being viewed by the client is then identified and provided to the agent who has been allocated to help, and then the two parties are placed in telephone contact.

There is thus no call member identified in the context of a call, no record lookup to identify a particular web page based on the call member identification, no record based on web pages as opposed to websites, and no provision of a particular web page, specified in the record and selected according to the identification of a call member, to a telephone terminal.

It is therefore submitted that the Examiner's rejection of the application is clearly in error, and should be reversed.

June 9, 2008

Respectfully submitted,

  
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